

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

MOHAMMED ABDALLAH OMRAN,)
)
 Plaintiff,)
)
 v.) 1:15-cv-00190-DBH
)
 PHILIP BLEEZARDE, *et al.*,)
)
 Defendants.)

MEMORANDUM OF DECISION

In this removed action, Defendants Philip Bleezard, Brendan Galway, and Kevin Clouthier request that the Court require Plaintiff Mohammed Abdallah Omran to comply with the in forma pauperis and filing fee procedures, and that the Court dismiss the matter if Plaintiff fails to comply with the filing requirements. (Motion for Court Order Requiring Plaintiff to Comply with the Procedures for the Prepayment of Filing Fees, ECF No. 17.) Defendants maintain that such an order would be consistent with the intent of Congress when it amended 28 U.S.C. § 1915(g), through the Prison Litigation Reform Act (PLRA), to bar prisoners, absent imminent danger of serious physical injury, from proceeding in a civil action or appeal under the federal in forma pauperis statute if they have, on three or more occasions while incarcerated, “brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(g). More specifically, Defendants contend that Plaintiff filed this action in state court in order to avoid “three strike” status, which would require Plaintiff to pay the entire filing fee.

In support of their request, Defendants note that courts in other districts have applied the section 1915 conditions and consequences to removed actions, particularly where courts have determined that an inmate filed in state court in a deliberate attempt to circumvent application of the “three strikes” rule set forth in section 1915(g). For instance, Defendants cite *Crooker v. Merch. CR Guide Co.*, C.A. No. 1:08-cv-10382, 2008 U.S. Dist. LEXIS 56852, at *12 (D. Mass., March 24, 2008), in which the court concluded that the plaintiff, who as the result of multiple filings was subject to the consequences of the three-strike rule, filed in state court with the expectation that the case would be removed to federal court. The court found the plaintiff’s strategy was deliberately intended to “(1) circumvent his filing fee obligations under 28 U.S.C. § 1915; (2) circumvent the three-strikes rule of 28 U.S.C. § 1915(g); and (3) avoid a preliminary screening on the merits pursuant to 28 U.S.C. § 1915(e).” *Id.* at *15.

Defendants’ argument is not without merit. In enacting section 1915, Congress recognized that some inmates file multiple, frivolous lawsuits, which divert the courts’ resources from the legitimate work of the courts. Some courts have thus concluded that an inmate should not be permitted to frustrate the purpose and intent of section 1915(g) by filing in state court an action over which the federal court has jurisdiction with the intent and expectation that the case would be removed to federal court. *See, e.g., Harris v. Florida Dep’t of Corr.*, No. 4:14-cv-00575, 2015 WL 1729474, at *4 – 5, 2015 U.S. Dist. LEXIS 49530, at *10 – 12 (N.D. Fla. Apr. 14, 2015). Other courts have determined that section 1915 is inapplicable because the defendant pays the fee in a removed action, and thus the plaintiff in a removed action is not proceeding in forma pauperis. *See, e.g., Howard v. Braddy*, No. 5:12-cv-00404, 2013 WL 5461680, at *4, 2013 U.S. Dist. Lexis 140775, at *9 (M.D. Ga. Sept. 30, 2013).

While application of section 1915 to all removed actions has some appeal, the plain language of the statute suggests that it applies to actions in which the plaintiff proceeds in forma pauperis in federal court. Ordinarily, in a removed action, the plaintiff is not proceeding in forma pauperis in federal court. As the court in *Jae v. Stickman*, No. 12-1332, 2012 WL 5830633 at *1, 2012 U.S. Dist. LEXIS 163756, at *2 (W.D. Pa. 2012), observed, “[section 1915(e)(2)(B)] applies only to *in forma pauperis* proceedings, and because [the defendant] paid the filing fee upon removal to this Court, Plaintiff is not proceeding *in forma pauperis*.” Under a plain reading of the statute, section 1915 does not have general application to a plaintiff in a removed action.

Nevertheless, under certain circumstances, application of section 1915 to a removed action might be appropriate. Most courts that have applied section 1915 in removed actions have determined that the plaintiff’s state court filing was an attempt to avoid section 1915’s consequences for filing multiple, frivolous actions. *See, e.g., Harris, supra; Crooker v. Merch. CR Guide Co., supra; Crooker v. Global Tel Link*, No. 1:11-cv-00229, 2012 WL 651644, at *2, 2012 U.S. Dist. LEXIS 25183, at *6–7 (D.R.I. Jan. 6, 2012) *report and recommendation adopted*, 2012 WL 651641, 2012 U.S. Dist. Lexis 25185 (D.R.I. Feb. 28, 2012). To condition application of section 1915, and potentially its three-strike rule, to a removed action on a finding that a state court filing was an attempt to avoid the requirements of section 1915 would not be an unreasonable approach. With such a finding, a court, in essence, would deem the plaintiff’s state court complaint, filed *in forma pauperis*, to be a filing in federal court pursuant to section 1915.

To resolve Defendants’ motion, however, the Court does not have to determine whether to adopt this approach. That is, even if the Court expressly determined that section 1915 applied to a removed action when a plaintiff’s state court filing was found to be a deliberate attempt to avoid the requirements of section 1915, the record in this case does not support such a finding. While

the record raises a suspicion as to Plaintiff's motive for filing this action in state court, because at the time of the filing, Plaintiff had been assessed with only "two-strikes," because both matters that are the subject of the "strikes" are currently subject to appellate review,¹ and because this is apparently Plaintiff's first state court filing, I am not persuaded that Plaintiff's state court filing represents Plaintiff's deliberate attempt to circumvent the requirements of section 1915.² I would not, therefore, deem Plaintiff's state court complaint to be a filing in this Court in accordance with section 1915 even if I were to endorse that approach.³ Accordingly, Defendants' motion is denied.

CERTIFICATE

Any objections to this Memorandum of Decision shall be filed in accordance with Fed. R. Civ. P. 72.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 14th day of August, 2015.

**U.S. District Court
District of New Hampshire (Concord)
CIVIL DOCKET FOR CASE #: 1:15-cv-00190-DBH**

Omran v. Bleezarde et al	Date Filed: 05/26/2015
Assigned to: Judge D. Brock Hornby	Jury Demand: Plaintiff
Referred to: Magistrate Judge John Nivison	Nature of Suit: 440 Civil Rights:
Case in other Strafford County Superior Court, 219- court: 2015-CV-00084	Other
Cause: 28:1441 Petition for Removal- Civil Rights Act	Jurisdiction: U.S. Government Defendant

¹ One matter is pending before the First Circuit Court of Appeals and another matter is pending before the Fifth Circuit.

² I recognize that Defendants have noted in other filings in this case that Plaintiff has filed additional matters in federal court in Louisiana. However, because I am unaware of the status of the matters, I am unable to conclude that the disposition of the Louisiana matters and the matters pending on appeal prompted Plaintiff to file in state court.

³ Through Defendants' motion and this decision, however, Plaintiff is now on notice that if he files any future matters in state court that are removed, a reviewing court will likely scrutinize closely the filings to determine whether section 1915 should apply, and whether Plaintiff's state court filing is in fact an attempt to avoid section 1915's requirements and consequences.

Plaintiff

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